

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL CASE NO. 3:09cv65**

FRANKLIN LEDFORD,

Plaintiff,

vs.

**D.R. HORTON, INC. and D.R. HORTON, INC. -
CHARLOTTE DIVISION,**

Defendants.

D.R. HORTON, INC.,

Third-Party Plaintiff,

vs.

CAROLINA FRAMERS, INC.,

Third-Party Defendant.

ORDER

THIS MATTER is before the Court on Defendant D.R. Horton, Inc.'s Motion to Dismiss [Doc. 3].

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge David C. Keelser was designated to consider the motion to dismiss filed by Defendant D.R.

Horton, Inc. (Horton) and to submit recommendations for its disposition.

Subsequent to the filing of Horton's motion to dismiss, the Plaintiff received permission from the Court to amend its Complaint. Defendant Horton then renewed its motion to dismiss as to the Amended Complaint. [Docs. 12, 17]. The renewed motion rendered the initial motion moot. As a result, the Magistrate Judge filed a Memorandum and Recommendation in which he recommended that the first motion to dismiss be denied as moot and that the second motion to dismiss the Amended Complaint be addressed on the merits. [Doc. 19].

In the Memorandum and Recommendation, the parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were to be filed in writing within ten days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Doc. 19 at 3]. The period within which to file objections expired on May 26, 2009 and no written objections to the Memorandum and Recommendation have been filed.

The Court concludes that the Magistrate Judge's recommendation is supported by the record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation.

There remain two other issues for resolution. The Amended Complaint lists Carolina Framers, Inc. as a defendant. There is, however, no proof of service in the record showing that the Plaintiff has served Carolina Framers. Subsequent pleadings, including the Answer and Third-Party Complaint of Horton do not show Carolina Framers as a defendant, only as a third-party defendant. The status of Carolina Framers in this action is, therefore, unclear.

In addition, the Third-Party Plaintiff Horton filed proof of service on March 4, 2009 showing that it served the Third-Party Defendant Carolina Framers on February 27, 2009. [Doc. 14]. The third-party answer was thus due on March 19, 2009 but no answer has been filed.

On February 26, 2009, however, the Plaintiff filed his Amended Complaint. As a result, on March 9, 2009, Horton filed its Answer to the Amended Complaint in which it once again asserted a third-party action against Carolina Framers. No proof of service of this amended pleading on Carolina Framers has been filed in the record. Carolina Framers has not made any appearance in the action. It is, therefore, unclear whether Carolina Framers has been served with the current pleadings and whether it is in default.

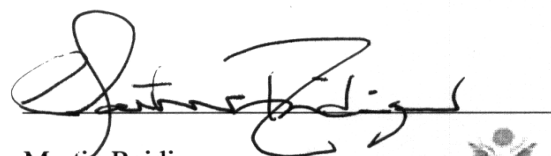
It is of importance that the pleadings close in a timely manner so that

the parties may proceed to their Initial Attorneys Conference and a Case Management Order can be entered.

IT IS, THEREFORE, ORDERED that the Defendant D.R. Horton, Inc.'s Motion to Dismiss [Doc. 3] is hereby **DENIED** as moot without prejudice.

IT IS FURTHER ORDERED that on or before fifteen (15) days from entry of this Order, the Plaintiff shall respond as to whether Carolina Framers, Inc. has been served with the Amended Complaint, and if so, on what date.

IT IS FURTHER ORDERED that on or before fifteen (15) days from entry of this Order, the Third-Party Plaintiff D.R. Horton, Inc. shall advise whether it has served Carolina Framers, Inc. with the Amended Third-Party Complaint, and if so, on what date.


Martin Reidinger
United States District Judge



Signed: June 2, 2009